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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 495

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, *et al.*,

Petitioners,

v.

CENTRAL AIRLINES, INC.,

Respondent.

PETITION FOR REHEARING ON ORDER DENYING WRIT OF CERTIORARI

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The International Association of Machinists and fifty-three discharged employees of Central Airlines, petitioners herein, file this their petition for rehearing on their application for writ of certiorari, and as grounds for such rehearing cite the following compelling circumstances which have intervened since petition for certiorari was filed herein:

1. First Reason for Granting Rehearing

On December 10, 1962, this Honorable Court rendered decision in *Smith v. Evening News Ass'n. (No. 13)*, *U. S.* [*51 LRRM 2646*]. Footnote number 1 of that

opinion suggested that a different decision might have resulted had there been a grievance arbitration procedure in the collective bargaining contract "which had to be exhausted before recourse could be had to the courts."

Although the instant case does not arise under Section 301 of the Labor Management Relations Act, but rather arises under the Railway Labor Act, the difference in the two statutes may not be significant on the issue of whether exhaustion of arbitration remedies is a pre-condition to court action. This case, therefore, poses a question reserved by *Smith v. Evening News*, to wit, whether exhaustion of arbitration [system board] remedies is a condition to bringing an action in court for breach of a collective bargaining contract, and if so, whether such condition is waived by the refusal of the employer to cooperate in the arbitration proceedings.

The Texas Court below held that since the union and the discharged employees "abandoned further available 'steps' in the grievance procedure * * * they are without standing in the courts and the relief prayed for is foreclosed." [p. 13a.] According to the undisputed evidence, however, such abandonment did not occur until two years of effort had been expended by the union trying to obtain a system board decision and after respondent had withdrawn its members from the system board, thereby disestablishing such board and preventing the deadlock which was required as a condition for the appointment of a neutral.

This same question was posed differently in the petition for certiorari. Section 204 of the Railway Labor Act makes

mandatory the establishment of a system board of adjustment; therefore, when a carrier withdraws its members from the system board, thereby preventing such board from functioning, does it not violate Section 204 of the Act? Footnote number 1 of the *Evening News* decision would indicate that this same question now has at least one other facet that requires elucidation in the developing law of enforcement of the collective bargaining contract.

2. Second Reason for Granting Rehearing

On or about October 18, 1962, a System Board of Adjustment award, hereinafter called the Shister award, involving this same union and this same carrier, was issued. The award was written by the Honorable Joseph Shister, as the neutral member of the system board. Respondent carrier refused to comply, just as it had refused to comply with the Robertson award involved in the case of *IAM v. Central Airlines* (Oct. term, No. 61) now pending in this Court. Petitioner union filed suit for enforcement of said award in the United States District Court for the Northern District of Texas (Civil Action No. 9339) where the case is not pending.[1]

Thus a pattern has emerged as to system board cases between respondent and petitioner union.

(a) In April, 1958, respondent denied union representation to six employees at a grievance meeting, thereby precipitating a strike.

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[1]Respondent has contested federal court jurisdiction; therefore, the District Court has continued the case pending decision by the Supreme Court in No. 61 which will be determinative of the same jurisdictional question.

(b) When the system board rendered an award (Robertson Award) calling for reinstatement and back pay of these six employees, who had been fired for failure to attend said grievance meeting, respondent refused to comply, and the enforcement of the award awaits this Court's decision in case No. 61 now pending.

(c) After the Robertson Award was rendered, respondent refused to participate in further system board proceedings on the grievances relating to the discharge of fifty-three strikers, whereupon the instant suit was filed.

(d) Subsequent to the filing of petition for certiorari herein, the aforesaid Shister award was rendered, but respondent refused to comply. Suit for enforcement of said award was therefore filed.

The foregoing represents a consistent attitude which respondent has displayed toward system board procedures required by the Railway Labor Act. Either respondent refuses to permit union representation, refuses to participate in the system board proceedings, or refuses to comply with the system board award. There have been no exceptions to this pattern since April, 1958.

The denial of certiorari herein has had the further effect of hardening respondent's attitude toward collective bargaining, with a consequent effect on contract negotiations which are now in progress. Also, the prospect of being unable to return the fifty-three discharged employees to their

jobs, as a result of the denial of certiorari, has weakened the union's bargaining position.

Thus, the status of system board proceedings at Central Airlines can be resolved only partially by case No. 61 now pending. The instant petition actually presents the greater part of the same dispute—greater in the sense that it represents the jobs of about a third of the entire bargaining unit.

CONCLUSION

For the foregoing reasons, petitioners respectfully urge the Court to grant rehearing of their petition for certiorari, and upon reconsideration to issue the writ.

Respectfully submitted,

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